

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO/CLC,

Plaintiff,

v.

Pliant Corporation,

Defendant.

MAGISTRATE JUDGE JLA

**COMPLAINT**

**04 - 12489 WGY**

Civil Action No. \_\_\_\_\_

COMPLAINT

JURY TRIAL AMOUNT \$ 150.00

SUMMONS ISSUED 1

LOCAL RULE 4.1 \_\_\_\_\_

WAIVER FORM \_\_\_\_\_

MCF ISSUED \_\_\_\_\_

BY DPTY. CLK. M.P.

DATE 11/24/04

Plaintiff United Steelworkers of America, AFL-CIO/CLC ("Union"), brings this action to redress Defendant Pliant Corporation's ("Company") violation of the Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §2101 et. seq. The Defendant violated WARN by failing to provide sixty days' notice to the Union before permanently shutting down production and closing the Company's Harrisville, Rhode Island facility on September 10, 2004. This suit seeks to compel payment of statutory damages owed to these aggrieved employees under WARN, including backpay and benefits for each day of the violation.

**Parties**

1. Plaintiff Union is the exclusive collective bargaining representative of all production employees at the Harrisville, Rhode Island plant of Pliant Corporation within the meaning of Section 9(a) of the National Labor Relations Act, 29 U.S.C. § 159(a), and is a representative of such employees of the Company within the meaning of WARN, 29 U.S.C. §2101(a)(4). The Union maintains its International Headquarters at Five Gateway Center,

Pittsburgh, Pennsylvania 15222, and provides representation within this judicial district.

Plaintiff Union brings this action on behalf of the Company's Union-represented employees who were aggrieved by the Company's violation of the WARN Act described below.

2. Defendant Company operates an industrial plant in Franklin County, Massachusetts, within this judicial district. Defendant Company is a employer within the meaning of the WARN Act, 29 U.S.C. § 2101(a)(1)(A), in that it is a business enterprise employing over 100 employees at its facilities in Harrisville, Rhode Island, and 18 other plants in the United States; all 19 plants in the United States are owned and operated by the Company. The Company also owns and operates eight plants outside the United States.

#### **Jurisdiction and Venue**

3. This Court has jurisdiction of this matter pursuant to the WARN Act, 29 U.S.C. § 2104(a)(5), and pursuant to 28 U.S.C. §§ 1331, 1337.

4. Venue lies within this judicial district pursuant to 28 U.S.C. § 1391.

#### **Factual Allegations**

5. At all times relevant to this action, Plaintiff Union was the recognized collective bargaining agent and exclusive representative of the maintenance and production workers at the Harrisville, Rhode Island plant of the Company. United Steelworkers of America, Local 16031-13 ("Local"), represented these employees for certain limited purposes.

6. The Company's Harrisville, Rhode Island plant constitutes a single site of employment within the Company's larger business enterprise as that term is used within the WARN Act.

7. At all times relevant to this action, the Company had at least 50 full-time employees at its Harrisville, Rhode Island facility.

8. As of July 30, 2004, thirty-eight employees were working in managerial, clerical, maintenance, and production positions at the Harrisville Plant.

9. As of July 30, 2004, eight unit members were on temporary medical leaves of absence. All eight employees remained on the payroll throughout their temporary disability leave, continued to receive health insurance supplied by the Company, and intended to return to work upon their recovery.

10. As of July 30, 2004, four union employees were on lay-off. All four union employees had a reasonable expectation of recall. Lay-offs due to fluctuations in product demand were extremely common at the Harrisville Plant. At the Harrisville plant, the Company made flexible plastic packaging—*i.e.*, plastic film used for a wide variety of uses ranging from food packaging to medical storage. The Company also made this product in other plants, including its facilities in South Deerfield, Massachusetts and Mexico City, Mexico. During the Company's history, it was not uncommon for the Company to shift production from one plant to another, on the basis of demand within regional markets. At various times over the 3 years in which the Company operated the Harrisville Plant, there were generally between four and twelve production workers laid off. Under the Contract between the parties, unit members who have been laid off retained recall rights for 2 years. Three of the four union employees on lay off had been laid off for less than two months; the other had been laid off for less than five months.

12. On or around August 24, 2004, thirty-six employees were working in managerial, clerical, maintenance, and production positions at the Harrisville Plant, eight employees were on temporary disability leave, and six employees were on temporary lay off. As of August 24,

2004, the six laid off employees had every reasonable expectation that they would return to work once production increased at the Harrisville plant.

13. On August 25, 2004, the Company announced to the Union and all employees that it intended to permanently shutdown the Harrisville facility, due to the age of the facility and the equipment therein. The Company's announcement stated that production lines would close as of September 30, 2004, and the entire plant would close October 15, 2004.

14. Prior to the Company's August 25 announcement, the Union had no notice that the Company intended to close the Harrisville plant. A new successor contract between the parties had just been executed, as of July 14, 2004, for the period of July 14, 2004 to July 14, 2007. During bargaining in the summer of 2004, the Company did not notify the Union that the plant was closing or likely to close. Rather, at the commencement of bargaining, the Company announced that the Harrisville facility, like all other Company facilities, were under review.

15. On September 8, 2004, the Company announced that the production line would shutdown permanently on September 10, 2004 at the end of the second shift (12:00 a.m.); all production workers would be permanently laid off as of September 10, 2004. The Company announced that all other employees of the Harrisville plant would be permanently laid off on or before October 15, 2004.

16. As of September 10, 2004, the production line was permanently closed and the plant was effectively shutdown. The only workers who continued to work at the plant were those who had accepted temporary positions winding down and disassembling the plant or serving as plant guards.

17. As a result of the shutdown described in paragraphs 13-16, there were at least 50 affected employees who suffered an employment loss at the Harrisville plant as defined by the WARN Act, 29 U.S.C. §§ 2101(a)(5), 2102(d).

18. The shutdown described in paragraphs 13-15 constitutes a plant closing within the meaning of the WARN Act, 29 U.S.C. § 2101(a)(2).

**Cause of Action**

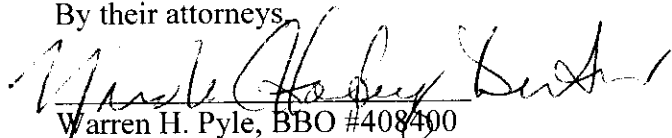
19. The Company failed to provide the notice to the Union mandated by the WARN Act of its intent to order a plant closing 60 days prior to ordering said plant closing, thereby violating the WARN Act, 29 U.S.C. § 2102(a).

WHEREFORE, Plaintiff requests the following relief:

1. That the Court declare that the Defendant has violated its statutory obligations under the WARN Act, and grant judgment for the Plaintiff and against Defendant;
2. That the Court order the Defendant to pay 60 days of wages and other benefits, with pre-judgment interest, to each affected employee in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1);
3. That the Court award Plaintiff its costs and attorney fees;
4. That the Court award Plaintiff such other relief as it deems proper.

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA,  
By their attorneys,

A handwritten signature in black ink, appearing to read "Warren H. Pyle", is written over a horizontal line.

Warren H. Pyle, BBO #408400

Nicole Horberg Decter, BBO #658268

Pyle, Rome, Lichten, Ehrenberg, & Liss-Riordan,  
P.C.

18 Tremont Street, 5<sup>th</sup> Floor

Boston, MA 02108

(617) 367-7200

Dated: November 23, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) United Steelworkers of America,  
AFL-CIO/CLC v. Pliant Corporation

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

04 - 12489 WGY

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Nicole Horberg Decter

ADDRESS Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan 18 Tremont St., Ste. 500

TELEPHONE NO. 617-367-7200

Boston, MA 02108

JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

United Steelworkers of  
America, AFL-CIO/CLC

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

Pliant Corporation

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE  
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Nicole Horberg Decter & Warren Pyle  
617-367-7200

Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C.  
18 Tremont St., Suite 500, Boston, MA 02108

Attorneys (If Known)

Richard Marcus  
312-876-8177

Sonnenschien, Nath, and Rosenthal  
8000 Sears Tower, Chicago, IL 60606

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

(For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
		<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET  
NUMBER

DATE 11/24/2004

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_